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Stafford, Wendell Phillips

"Our labor troubles and the  
way out"

Washington, D.C.

[1920]

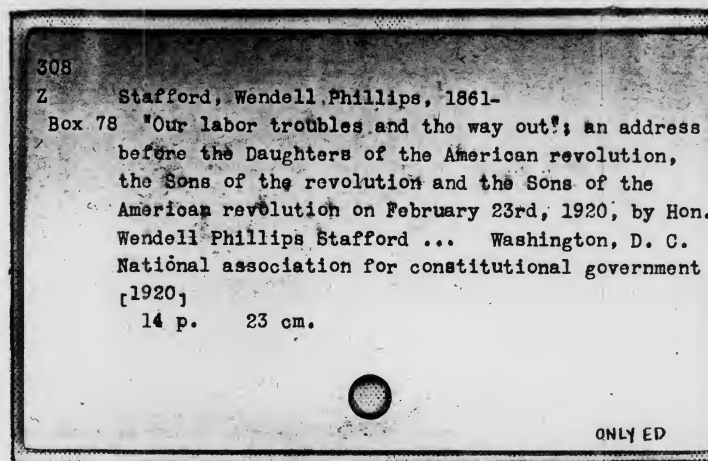
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"OUR  
LABOR TROUBLES  
AND  
THE WAY OUT"

AN ADDRESS

BEFORE THE

Daughters of the American  
Revolution

The Sons of the Revolution  
and the

Sons of the American Revolution

ON

FEBRUARY 23rd, 1920

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*By Hon. Wendell Phillips Stafford*

*Associate Justice of the Supreme Court  
of the District of Columbia*

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National Association  
For Constitutional Government

716-717 COLORADO BUILDING

Washington, D. C.

19 Feb 1920 Jms

## "Our Labor Troubles and The Way Out"

Once more we come to celebrate the birthday of Washington. There is but one fitting and proper way; and that way is to consider the state of the country to which he gave his laborious days and watchful nights. What else would he ask about if he were here? Washington's love for his native land is something that passes the comprehension of ordinary men. It was as much greater than their own as his mind was larger and his heart more fiery and strong. Washington's emotions were under stern control, but they were his. He rode and curbed a temper more mettlesome and headstrong than any steed he ever bestrode. It is said that he could break his horse's ribs with his knees. If that is a fable, it is no fable that he could crack the ribs of his own furious temper, when there was need, and at all times, except when he was deeply moved by treasonous conduct on the part of his officers, he could and did ride it with the imperturbable calm of a master. But his love for his country, the deepest human passion of his nature, he never tried to curb. Washington was Pater Patriæ. His love for this nation was the love of a strong father for his daughter, beautiful and brave but ever needing the protection of his powerful arm. Humanly speaking, there is no doubt that she did owe her very being to him, as truly as any daughter owes her existence to her sire. He carried the Revolution upon his own shoulders through more than one desperate strait. He secured the adoption of the Constitution. He gave up the coveted quiet and ease of age to bear the New World on his shoulders for eight years more; and when at last he laid aside his Atlantean load and left the seat of power to his successors, he left his

counsels to them and to his people in massive and enduring words which we do well to ponder on this day.

That solemn charge discloses the faith of the man of God. Nothing in it all is more impressive than the consciousness it reveals of the divine guidance. Washington had no doubt that God had been with him throughout his Herculean labors. He had no doubt that God had deliberately withheld the western hemisphere from settlement until a time had come when men had learned to prize their freedom and had achieved the strength and wisdom to set up and carry on a government "of the people, by the people, for the people." He anticipated by three-quarters of a century Lincoln's great utterance at Gettysburg, for, in his first inaugural he declared that the future of free government itself was "deeply, perhaps permanently staked" upon the success of this experiment. And finally, in his Farewell Address he pointed us to the constellation which he had organized in the zodiac of the new skies, and said: "These are the principles by which you are to steer the ship of state." If any man doubts the prophetic vision of the Father of his Country let him read again that part of the Farewell Address dealing with the dangers that lie hid in factional combinations.

"The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government. All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force; to put, in the place of the delegated will of the nation, the will of a party,

often a small but artful and enterprising minority of the community. \* \* \* However, combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterward the very engines which have lifted them to unjust dominion."

The question that stares us in the face today is this: How can we curb the selfish and tyrannical combinations of labor and of capital alike without infringing upon the rights of property or the rightful liberty of the individual citizen? It is often asserted (and it is Mr. Samuel Gompers' favorite maxim) that the mere right to combine cannot be limited at all. It is said that whatever one man has a right to do by himself any number of men have a right to do together. We are told that no law must be passed attempting to curtail this right; and we are warned that if any such law is passed it will be the right of every man to disobey it. Let that proposition be tested. It can be done in a word. I have a right to walk down that street. But have a thousand men a right to walk down the street together? If so, what becomes of your right to use the street? In ordinary times I have a right to sell my goods or to keep them for any price I may demand, but have I a right to join with all my fellow-dealers and say, "We will not part with a cent's worth of these goods till they bring the price we fix?" The answer to the Labor leader's proposition, then, is simply that it is false. The danger may and often does lie in the mere fact that a multitude is doing what any one of the multitude might do without harm to any one.

Now let us come to close grips with this question. Do you assert that all wage-earners

have a right to unite to raise their wages, or get whatever else they want, while at the same time you deny to other classes the same right, or do you concede the same right to all? Test it. What if all the physicians, all the surgeons, all the trained nurses, and all the registered druggists were to unite in one great federation of medical aid and should refuse to lift a finger to save a human life until their demands of whatever nature they might be were met and satisfied. Do you say that the people through their law making power could not deal with a case like that? I am not speaking of what the law is now, I am not discussing any question now in litigation before the courts. I am only trying to find out what can and what cannot be done by the people if they make up their minds that the circumstances call for a new law in place of the old. Even a judge, I assume, has a right to express his views upon a great and fundamental question of governmental policy, and I wish to lay down the broad outline of a legislative programme, which I believe would be within the power of the people, and which might go far toward relieving us of our present troubles. Do me the justice to see that I am not speaking as the advocate or as the critic of any class whatever, whether of labor or of capital. The question I am dealing with is a question that transcends all lines of class, and the solution I offer is one that applies to every class alike.

Now the foundation on which we have to build is the principle which Washington laid down for us in the passage that I read—the right of the people, through the expressed will of the majority, to decide for themselves upon every governmental question, and the correlative duty of every citizen to respect and obey the law. It follows, therefore, that any attempt by a group to override the will of the majority as expressed in law is treason to the people and to the government itself. There-

fore, any industrial union that threatens to use its power by way of strikes to overawe the constituted authorities is attempting to use industrial power to control political power. It is attempting to substitute for the right of the majority the mere selfish will of a minority, and that is tyranny: and a tyrant is a tyrant even if it is a Labor Union! The right to combine in political parties is, and it ought to be, absolutely without limit. Men have a right to go to the polls in as large numbers as they can muster, and to vote for the men and measures they believe in. But what if all the men engaged in running the railroads were to unite in demanding from Congress the passage of a law that would turn over the roads to them on their own terms and leave the people saddled with the debts of the roads, and should threaten to leave their work as one man if their demands were not completely satisfied. That would be an instance of an industrial union using its strategic advantage as a minority to coerce the majority; and it would be doing it in a matter that affects every home and every poor workingman in the United States. It is a cruel and wicked weapon that only cowards and bullies would ever use. It is a holdup, as much as a highwayman's act in demanding your money or your life.

Now, if you will take a glance at the field of operations you will see that all who labor may be arranged under three groups.

First, all who work for the Government itself.

Second, all who are at work in the service of the public, but under the name of public utilities.

Third, all others whatsoever.

First, then, what is the right of Government workers to combine? There is and there can be no such right if it interferes with their paramount duty at all times and in all places to the people, whose servants they are and

must be. This principle forbids the organization of Government employees for the purpose of compelling the Government to do their will, in any manner whatsoever, by strike or otherwise. Second, what is the right to combine in those who also work for the people but under the name of public utilities, like those who run the railroads and repair their equipment? There can be no such right in these if it conflicts with the public welfare for that is the very purpose for which the utilities were created, and there can be no interference with the public right under the guise and pretense that it is a private enterprise that is being carried on. Thus far we have been blind enough to admit the right of workers in this field to unite as freely and in as great numbers as those in the common private business of the workaday world, and see what a pass it has brought us to!

We have said to Labor, "You may unite, you may unite in any numbers. You may strike. You may strike at any moment and with all your power. You may do so even when you are carrying on a work upon which the very life of the public depends." And labor has taken us at our word. It has organized to perfection; and it now stands on a vantage ground where it can say, for one thing, "Hand over the railroads to us, and let us fix our own wages, or we will leave you in the lurch. We are going to have what we believe is right, or you must take the chance of ruin to the whole country and starvation to all the people." To such a pass, I say, we have been brought by treating as if they were not public servants, but only hired hands in a petty, private business, the men upon whose constant, loyal service not the welfare merely but the very existence of the community depends. Now what is the way out? Why the way out is to go back to where we started from and face the fact. The fact is that the men who engage in a service like that are not

private employees at all. They are public servants. To use an expression that socialists use and approve, they are Soldiers of the Common Good. Well, then, if they are soldiers they have no more right to strike than any other soldier has. That is what is right in the moral sense. Let it be made the test of what is right in the legal sense as well. The law ought to be so changed that when men engage in a service of that public character it shall be a crime to strike; it shall be as flagrant an offense as the desertion of a soldier who throws down his arms upon the firing line. "But is not that slavery?" you ask, "How can any man be forced to stay and work on a railroad if he wishes to work somewhere else?" Well, in the first place, we are not talking about that. We are not speaking of one man leaving his work by himself, and leaving it for good and all. We are talking about his doing that in combination with all his fellows, and doing it just long enough to force the public to see ruin staring it in the face and come to terms. That is not liberty; that is conspiracy. I claim there must be a surrender of this right to strike when men enter upon a service which is in fact, and which the law should declare to be, a public service. All who enter upon such a service must *enlist*. They must be bound by agreement and by law to stay in the service until they are properly and legally discharged; and the conditions upon which they can be discharged must be such as to make impossible any such thing as a strike or a lockout. But to accomplish this one other thing is needed. Some method must be devised whereby grievances and disputes can be adjusted. Some tribunal, as a last resort, must be given the power to determine, and determine finally and conclusively the merits of the case. Call it compulsory arbitration or what you please, but the power must be lodged somewhere to be resorted to when all other means have failed.

But you ask, "Can that be done, even in the case of these public utilities?" My answer is, it can: Of the right of the people, through their law-making bodies, to create a tribunal with such powers, I have not the slightest doubt. The power is implied in the very fact that the business is a public business. As lawyers say, it is charged with a public interest, a public trust. There is nothing new in the principle itself. It is as old as the common law. Our fathers saw it and acted upon it even in what you would call the old unenlightened days in England. When all traveling in country districts had to be done on horseback, the traveller had a right to demand that the first blacksmith he came to should shoe his horse. If the smith was surly or groggy and would not do his work, he went to jail. By the same law the innkeeper was obliged to take in travellers to the capacity of his house. And so today, as we all understand, a railroad is obliged to receive and carry the freight you tender it. Well, then, if the road is bound to carry it, how has it come about that the men who actually run the road have a right to get together and say, "This road shall not carry anybody's freight till we have had our way." Can we not see that the same principle forbids that they should have the right to say so, and that as soon as they have made themselves a part of that business they have become bound by all the obligations that inhere in the business itself? But we must not stop there. If we insist on the workers taking upon themselves those obligations, we must do one or the other of two things: either we must acknowledge their right to some share in the management of the business, or else we must put the service on the classified civil service basis as we have the post office, and give to every citizen an equal chance to enter it. But in no event can we concede to the men who happen to be operating the road the right to control it, while we the public,

are left to carry the property and make up any possible losses of the business. Railroad employees are only one part of the public. Like every other part they must bow to the majority. And what has been said about railroads applies in turn to every public utility.

Now look at the third group. This brings us to the most important as well as the most difficult part of the problem. Is there a right to combine, in those who are at work for private employees? Many of these are also doing work that must go on if the public is to live and prosper. But if we begin to take charge of these works also, where are we going to stop? Most of us would hold back from setting up a socialistic state. Then we must find means to check combinations among such workers as well as among those who work for the Government directly and those who work for the people indirectly in their public utilities, provided it can be done without breaking over the bounds of liberty. What are those bounds? We have already seen that there is and can be no such thing as an unlimited right to combine even in respect to private conduct and private property. But we must hold an even hand between the rights of private property and the right to personal liberty. Take the case of an employer who has a thousand hands at work in his factory. He has the strength of the earnings of past generations of labor, and he is far stronger than any single hand at work for him. His hands ought to be at liberty to unite and bargain with him as one man. But if he is not allowed, and he ought not to be allowed, to unite with other employers to keep wage down, why should his workmen be permitted to unite with other workmen to keep wages up? Their right ought to be as broad and unquestionable as his; but why should it be broader or more perfect? Why should either employer or employed be permitted to combine with mere outsiders? As we have seen we



cannot make a privileged class out of wage-earners. We must treat all classes alike. But this we have not done. We have let the thing run on until we are faced with a condition that cannot be borne any longer. We must curb this power of combination or it will destroy us. We can, and I believe we shall, find means to curb both labor and capital, by laws that will make it impossible for either, by itself, or for both together, to strike hands and cheat the people out of anything the people need for their welfare. Such overgrown combinations of workers as the American Federation of Labor are incompatible with the welfare, if not with the very safety, of the people, as incompatible as is the most evergrown and arrogant combination of the money power that now attempts to hoard and sell our daily bread and to take its blood-sucking gains from our necessities. The public will soon be ready to cry out, like the gasping Mercutio, wounded to death in the quarrel of the rival houses of Verona, "A plague o' both your houses!" I know that labor unionism came to birth because of the cruel iniquities of the capitalistic class; but the laws have been changed in many ways since then and they now give to labor a large measure of protection. If they are still imperfect in any way they can and ought to be made perfect; and they will be made perfect if the laborers make use of the regular political methods to secure the needed laws. But the methods they are making use of now are a menace to all that we would and must save from the whirlpool of factional strife, and if they are persisted in much longer they will wreck the organizations themselves that use them—organizations that have been in days gone by a necessary counterpoise to the tyrannical power of rich and greedy classes—classes that still grind the faces of the poor to gratify their own desire for luxury.

Now with these facts before us can we not lay out a plan that we can work to? Remember we are dealing now with private workers only.

First. Let us frankly and fully acknowledge the right of any body of employees, no matter how large, at work for the same employer, to join hands and make their bargain with him as if they were one person; and let us also freely acknowledge that they have a right to strike when all other lawful means have failed.

Second. Suppose, however, that we require every such body, wishing to make a bargain as one person, to take out a charter of incorporation and give bonds to keep their contract.

Third. Let us make it unlawful for workers to combine for the purpose of a strike unless they are at work for the same employer. This would do away with sympathetic strikes.

Fourth. Let us provide for boards of arbitration, even if their decisions cannot be made binding in law upon the parties. Let them hear disputes and publish their awards, giving the people full knowledge of the facts. Public opinion will go far toward enforcing any fair award.

Fifth, and last. Let it be the law that when a case is brought before the board the right to strike shall be held up until the board has had a reasonable time, made certain by the law, to hear the case and publish its award.

These are some of the checks upon the power of combination which I believe the people have a right to put to use. Should we not make use of all the means at hand before we go afield in search of doubtful and heroic remedies?

Finally. Have we no word today for the men who tell us that even if the people through their law-making assemblies should

take away their claimed right to combine for the purpose of striking, and thereby of starving and freezing the poor people of this country into submission to their demands, they will spurn and spit upon such laws and will utterly refuse to heed them or to follow the direction of any court that commands them to obey such laws? We can at least remind ourselves of what Washington would say. You remember his favorite maxim, "Thorough." We must be thorough with these men, and we must not yield one single inch to their insulting and imperious demands. We must put ourselves upon the right road, and then we must go along that road to the very end, no matter who stands in the way. We must not be cowed by capital nor bulldozed by labor, and we must be sure that we are right before we go ahead. "The people mean right and in the end they will have the right." "You can't fool all the people all the time, but you can fool a part of the people all of the time and you can fool all of the people some of the time," as Lincoln said.

It is not a misfortune for liberty that the people have such questions to face and to decide. On the contrary that is the very condition upon which free Government exists. As Wendell Phillips said: "If the Alps, piled in cold and still sublimity, be the emblem of despotism, the ever-restless ocean is ours, which, girt within the eternal laws of gravitation, is pure only because never still."

# NATIONAL ASSOCIATION FOR CONSTITUTIONAL GOVERNMENT

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WASHINGTON, D. C.

## AIMS OF THE ASSOCIATION

It is the object of the Association to propagate a wider and more accurate knowledge of the Constitution of the United States, and of the distinctive features of constitutional government as conceived by the founders of the Republic.

To inculcate an intelligent and genuine respect for the organic law of the land.

To bring the minds of the people to a realization of the vital necessity of preserving it unimpaired, and particularly in respect to its broad limitations upon the legislative power and its guaranties of the fundamental rights of life, liberty and property.

To oppose attempted changes in it which tend to destroy or impair the efficacy of those guaranties, or which are not founded upon the mature consideration and deliberate choice of the people as a whole.

As the aim of the Association is patriotic rather than partisan, it feels warranted in appealing to all citizens who value the institutions inherited from our fathers.

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